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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,337	07/18/2003	German Borda		2506

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EXAMINER

SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/621,337	BORDA, GERMAN	
	Examiner	Art Unit	
	Robert G. Santos	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/18/2003, 12/18/2003 and 11/03/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 42-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-22, 24-34, 36-39, 41, 56 and 57 is/are rejected.
- 7) ☒ Claim(s) 15, 23, 35 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12182003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 42-55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on November 3, 2004.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 9, 10, 12-14, 16-19, 21 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogar, Jr. '638. With regards to claims 1 and 56, Bogar, Jr. '638 shows the claimed limitations of an adjustable base comprising first and second pairs of support brackets (12, 14), each first and second pair of support brackets including first and second support brackets (26, 28), the first and second support brackets of each pair being disposed in substantially parallel relationship to each other (as shown in Figures 1 & 2), the first and second support brackets of the first pair of support brackets being substantially aligned with the first and second support brackets respectively of the second pair of support brackets (also as shown in Figures 1 & 2), and each of the first and second support brackets of each pair of support brackets including means for effecting variable fastener locations (46, 48) whereby the first and second

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pairs of support brackets can be selectively variably spaced from each other (as shown in Figures 2 & 4), and means for securing (24) the support bracket to at least one of a head board and a foot board. As concerns claims 2-6, the reference is considered to show the use of means for interconnecting the first and second support brackets of each of the first and second pair of support brackets, each of the interconnecting means includes an elongated side rail (20, 22), and the elongated side rails are disposed in substantially parallel relationship to each other (as shown in Figures 1 & 2). With regards to claims 9 and 10, the reference discloses the use of means for securing (30) each of the first and second support brackets to a side rail of a bed frame. As concerns claim 12, the reference is considered to show a condition wherein each of the first and second support brackets includes first and second substantially opposite end portions, the first and second support brackets first end portions each include means for securing (30) the first and second support brackets to a bed frame, and the first and second brackets second end portions each include the variable fastener locations effecting means (46, 48). With regards to claims 13, 14, 16-19 and 21, the reference discloses a condition wherein each of the first and second support brackets includes first and second substantially offset opposite end portions (elements 38 are horizontally offset from their respective opposite end portions as shown in Figures 1 & 2) and a medial portion therebetween; and means in the form of a substantially rigid reinforcing plate (32) between the medial portion and each of the offset opposite end portions of the first and second support brackets for reinforcing the same.

4. Claims 1-7, 9-14, 16-22, 24-28 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,027, 343 to Hooker. With regards to claims 1 and 56, Hooker

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'343 shows the claimed limitations of an adjustable base comprising first and second pairs of support brackets, each first and second pair of support brackets including first and second support brackets (100), the first and second support brackets of each pair being disposed in substantially parallel relationship to each other (as described in column 6, lines 54-60), the first and second support brackets of the first pair of support brackets being substantially aligned with the first and second support brackets respectively of the second pair of support brackets (as shown in Figure 3), and each of the first and second support brackets of each pair of support brackets including means for effecting (63) variable fastener locations whereby the first and second pairs of support brackets can be selectively variably spaced from each other, and means for securing (22) the support bracket to at least one of a head board and a foot board. As concerns claims 2-6, the reference is considered to show the use of means for interconnecting the first and second support brackets of each of the first and second pair of support brackets, each of the interconnecting means includes an elongated side rail (12), and the elongated side rails are disposed in substantially parallel relationship to each other (as described in column 6, lines 54-60). With regards to claim 7, the reference discloses a condition wherein the variable fastener locations effecting means is aperture means (63) associated with each of the first and second support brackets. With regards to claims 9 and 10, the reference discloses the use of means for securing (18, 50) each of the first and second support brackets to a side rail of a bed frame. As concerns claims 12 and 20, the reference is considered to show a condition wherein each of the first and second support brackets includes first and second substantially opposite end portions, the first and second support brackets first end portions each include means for securing (18, 50) the first and second support brackets to a bed frame, and the first and second brackets second end

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portions each include the variable fastener locations effecting means (63) in Figures 3-6. With regards to claims 13, 14, 16-19, 21, 22 and 24-27, the reference discloses a condition wherein each of the first and second support brackets includes first and second substantially offset opposite end portions (elements 66 are horizontally offset from their respective opposite end portions as shown in Figures 1-3 & 6) and a medial portion therebetween; and means in the form of a substantially rigid reinforcing plate (34) between the medial portion and each of the offset opposite end portions of the first and second support brackets for reinforcing the same. As concerns claim 28, the reference is considered to show a condition wherein each of the first and second support brackets is of a substantially identical construction (see Figure 3).

5. Claims 1-10, 12 and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Pat. No. 4,225,265 to Hooker et al. (note especially Figures 1-4; column 3, lines 49-68; column 4, lines 1-5, 14-34 & 39-41; and column 5, lines 18-50).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hooker et al. '265 in view of Lafferty '968. As concerns claims 29 and 30, Hooker et al. '265 lack the use of bed-adjusting means supported by the adjustable base and fastened thereto as well as means

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for effecting a mattress appearance to the exterior of the bed frame. Lafferty '968 provides the basic teaching of a bed frame (12) supporting and fastened to an adjustable frame (22) which in turn supports a mattress (24). The skilled artisan would have found it obvious at the time the invention was made to provide the adjustable bed of Hooker et al. '265 with bed-adjusting means supported by the adjustable base and fastened thereto as well as means for effecting a mattress appearance to the exterior of the bed frame in order to allow a user to be supported in a variety of desired mattress configurations, thereby helping to provide enhanced user comfort. As concerns claims 31 and 32, Hooker et al. '265 further teach conditions wherein the variable fastener locations effecting means is aperture means (63) associated with each of the first and second support brackets, and wherein each of the first and second support brackets includes first and second substantially opposite end portions, the first and second support brackets first end portions each include means for securing (18, 50) the first and second support brackets to a bed frame, and the first and second brackets second end portions each include the variable fastener locations effecting means (63) (see Figures 3-6).

8. Claims 30, 32-34, 36-39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogar, Jr. '638 in view of Lafferty '968. Bogar, Jr. '638 lacks the use of bed-adjusting means supported by the adjustable base and fastened thereto. Lafferty '968 provides the basic teaching of a bed frame (12) supporting and fastened to an adjustable frame (22) which in turn supports a mattress (24). The skilled artisan would have found it obvious at the time the invention was made to provide the adjustable bed of Bogar, Jr. '638 with bed-adjusting means supported by the adjustable base and fastened thereto as well as means for effecting a mattress

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appearance to the exterior of the bed frame in order to allow a user to be supported in a variety of desired mattress configurations, thereby helping to provide enhanced user comfort.

As concerns claim 32, Bogar, Jr. '638 further teaches a condition wherein each of the first and second support brackets includes first and second substantially opposite end portions, the first and second support brackets first end portions each include means for securing (30) the first and second support brackets to a bed frame, and the first and second brackets second end portions each include the variable fastener locations effecting means (46, 48). With regards to claims 33, 34, 36-39 and 41, Bogar, Jr. '638 also discloses a condition wherein each of the first and second support brackets includes first and second substantially offset opposite end portions (elements 38 are horizontally offset from their respective opposite end portions as shown in Figures 1 & 2) and a medial portion therebetween; means (32) between the medial portion and each of the offset opposite end portions of the first and second support brackets for reinforcing the same; and the variable fastener locations effecting means is aperture means (46, 48) associated with at least one of the opposite end portions of the first and second support brackets.

9. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bogar, Jr. '638 in view of Copeland '596, or alternatively, as being unpatentable over Hooker '343 in view of Copeland '596. Bogar, Jr. '638 and Hooker '343 do not specifically disclose the use of a securing means which is a downwardly directed hook for receipt in a slot of at least one of a head board and a foot board. Copeland '596 provides the basic teaching of an adjustable base (10) including securing means (26) comprising a downwardly directed hook (27) for receipt in a slot of at least one of a head board (11) and a foot board (12). The skilled artisan would have

found it obvious to provide the respective adjustable bases of Bogar, Jr. '638 and Hooker '343 with securing means which is a downwardly directed hook for receipt in a slot of at least one of a head board and a foot board since this type of attachment plate construction is well-known in the art as taught by Copeland '596.

Allowable Subject Matter

10. Claims 15, 23, 35 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Taylor '145, Thomas et al. '633, Hooker et al. '871, Fredman '287, Hooker '141, Spitz '211, Spitz '884, Spitz '383, Fredman '970 and Miller '602.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
January 18, 2005